

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

WILLIAM J. M [REDACTED]

by the Elkhorn Area School District
Board of EducationDECISION AND ORDER
94/95-EX-16

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the May 1, 1995 order of the Elkhorn Area School District Board of Education expelling William J. M [REDACTED] from the Elkhorn Area School District from April 25, 1995 through January 26, 1996. This appeal, was filed by William J.'s mother, Mary Jo M [REDACTED], and was received by the Department of Public Instruction on May 18, 1995.

In accordance with the provisions of sec. PI 1.04(5), Wis. Adm. Code, this Decision and Order is confined to a review of the record of the school board hearing. The State Superintendent's review authority is specified in sec. 120.13(1)(c), Wis. Stats. The State Superintendent's role is to ensure that the required statutory procedures were followed, that the school board's decision was based upon one or more of the established statutory grounds, and that the school board was satisfied that the interests of the school district demand that the student be expelled.

FINDINGS OF FACT

The record contains a Notice of Pupil Expulsion Hearing dated April 19, 1995 from the District Administrator of the Elkhorn Area School District which was sent separately to William J. and his parents by certified mail. The Notice advised that a hearing would be held on April 25, 1995 which could result in William J.'s expulsion. The Notice alleged that William J. had written or been involved in the writing of graffiti on school property on or about March 26, 1995. The Notice indicated that William J.'s complete disciplinary and academic record may be considered in determining any period of expulsion. A current copy of sec. 120.13(1)(c), Stats., was printed on the back of the Notice. Also, copies of the school district policies on vandalism and expulsion were attached to the Notice. Minutes of the school board expulsion hearing and a written transcript of the expulsion hearing are also part of the record.

The hearing was held in closed session on April 25, 1995. William J. and his mother appeared at the hearing. They were not represented by counsel. At the hearing the school district administration presented the testimony of several witnesses as well as photographs and documentary evidence supporting the allegations of misconduct by the pupil. William J. and his mother were given an opportunity to question witnesses and to respond to the administration's assertions. No witnesses were presented on William J.'s behalf. William J. did admit he engaged in the alleged conduct.

After the hearing the school board deliberated in closed session. The board found William J. did engage in conduct while not at school or while not under the supervision of a school authority which endangered the property, health or safety of others at school or under the supervision of a school authority. The school board further found that the interests of the school

demand the student's expulsion. An Order of Expulsion was subsequently entered on May 1, 1995, was sent separately to William J. and his parents by certified mail. The order stated William J. was expelled effective April 25, 1995 through January 12, 1996. The order further stated that the school board reserves the right, any time prior to January 12, 1996, to extend the period of expulsion to William J.'s 21st birthday. However, the order indicates that William J. may, subsequent to January 1, 1996, come before the school board and present information which may persuade the school board not to extend the expulsion to William J.'s 21st birthday, such as whether William J. had paid the restitution he owes; whether William J. has been involved in legal problems during the period of the expulsion; and what William J.'s education status and progress have been during the period of the expulsion.

DISCUSSION

School districts are limited purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. *Iverson v. Union Free High School District*, 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from sec. 120.13(1)(c), Wis. Stats., which establishes certain categories of offenses which may be the basis for an expulsion and sets out specific procedures which must be followed in the expulsion process.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has stated that the scope of the State Superintendent's review is limited to that set out in sec. 120.13(1)(c), Wis. Stats. In *Racine Unified School District. v. Thompson*, 107 Wis. 2d 657, 667, 321 N.W. 2d 334 (1982), the court of appeals *in dicta* stated: "The superintendent's review,

then, would be one to insure that the school board followed the procedural mandates of subsection (c) concerning notice, right to counsel, etc." *Id.* It is therefore incumbent upon the State Superintendent in reviewing an expulsion decision to ensure that the required statutory procedures were followed, that the school board's decision is based upon one of the established statutory grounds, and that the school board is satisfied that the interests of the school district demand the pupil's expulsion.

I note that there is no provision in sec. 120.13(1)(c), Wis. Stats., which limits the duration of an expulsion. Accordingly, an expulsion for the remainder of a student's career appears to be statutorily permissible. See *Jesse K. v. School Board of Joint District No. 2 of Sun Prairie (and others)*, Decision and Order no. 131 (June 17, 1985). See also *Michael G. v. Hudson School District Board of Education*, Decision and Order No. 219 (February 11, 1994), upholding permanent expulsion of pupil.

I find the school board's order concerning the potential length of the expulsion to be ambiguous. Accordingly, I will construe the order to reflect a permanent expulsion, with the opportunity for the pupil to apply for readmission after January 1, 1996 and to present the information specified in the order. If alleged misconduct occurs after readmission, the district should observe all the usual requirements of sec. 120.13(1)(c), Wis. Stats.¹

In reviewing the record in this case and the findings set out above, I conclude that the school board complied with all of the procedural requirements in this matter. I am therefore compelled to affirm the expulsion decision as entered.

¹Districts should be aware that only very serious and dangerous pupil misconduct will support a permanent expulsion. Substantive due process considerations may arise in the context of a permanent expulsion or an expulsion order construed to be a permanent expulsion because of ambiguity. School boards should follow the form of the expulsion order mailed to all school district administrators and board members on June 16, 1994.

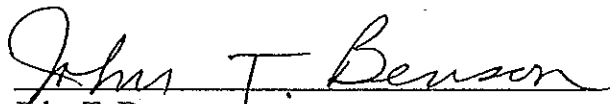
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of William J. by the Elkhorn Area School District Board of Education is affirmed.

Dated this 12th day of July, 1995.


John T. Benson
State Superintendent of Public Instruction